DOCUMENT RESUME

ED 150 896 HE 009 575

AUTHOR Saunders, Charles B., Jr.
TITLE Getting Our Act Together (or, How to Keep the Government from Playing the Featured Role).
PUB DATE 8 Nov 77
NOTE 12p.; Speech presented at the National Assembly of the National Center for Higher Education Management Systems (Denver, Colorado, November 8, 1977)

EDRS PRICE MF-$0.83 HC-$1.67 Plus Postage.
DESCRIPTORS *Academic Freedom; College Role; Committees; Cost Effectiveness; Federal Government; *Federal Regulation; *Government School Relationship; *Higher Education; *Institutional Autonomy; Institutional Role; Laws; National Organizations; Self Evaluation; *Standards
IDENTIFIERS Commission Administrative Standards Procedures; *Self Regulation

ABSTRACT

Roles to be played by institutions of higher education in the face of federal regulation are examined in this summary speech at the National Center for Higher Education Management Systems. Focus is on suggestions for pursuing academe's value imperatives with maximum support and minimum interference from the federal government. Some elements of a strategy for dealing with the federal presence are oulined, including: assume that there is no way to get government out of higher education; seek to establish the "test of necessity" written into the Education Amendments of 1976 and encourage Congress to apply this test consistently; apply expertise in cost-benefit analysis; share findings and methods of collecting and analyzing data on federal impact; devise a practical and credible mechanism for self-regulation; develop a systematic process for identifying problem areas where there are no generally recognized standards and develop consensus on standards that can be articulated for the entire community; and establish a Commission of Administrative Standards and Procedures, with appointive representation from each of the national higher eudcation associations. (LBH)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

Getting Our Act Together
(or, How to Keep the Government from Playing the Featured Role)

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

Charles B. Saunders Jr.

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC) AND USERS OF THE ERIC SYSTEM."

by

Charles B. Saunders, Jr.
Director of Governmental Relations
American Council on Education

ED150896

The program for this National Assembly reads for all the world like an agenda for a decade of ambitious conferences. The topics addressed over the past 24 hours highlight some of the most important problems facing higher education in the 1980s, and some of the most difficult choices to be made in pursuit of our value imperatives of excellence, diversity, and access.

And now, in his tidy way, Ben Lawrence has assigned me to summarize: "What do we do about it?"--in 2,000 words or less.

In attempting to answer that question, I will not address any of the weighty issues of planning, management and financing which were discussed earlier in the program. Instead, I plan to suggest what we can do to pursue our value imperatives with maximum support and minimum interference from the federal government. Like it or not, the federal presence in higher education now looms as a major factor in the realization of our goals. From my vantage point, getting our act together means keeping the government from playing the featured role--and there is something we can do about it.

HE009575

There is no need here to enumerate the ways in which federal laws and regulations have affected institutional planning, management, and financing. In recent years the government has involved itself directly or indirectly in the ways

---

Address to the 1977 National Assembly of the National Center for Higher Education Management Systems, Denver, Colorado, November 8, 1977.

we deal with students, hire and retain faculty, construct and renovate our facilities, set academic and administrative policies, and obtain our financial support.

Although we have grown increasingly concerned over these developments, we have been reluctant and uncertain about dealing with them. We have been mainly reactive rather than pro-active. We have not worked out a strategy to guide our own behavior. For my part of this program, I will outline some of elements of a strategy for dealing with the federal presence.

First, we should begin with the assumption that there is no way to get the government out of higher education. Congressman Bill Ford's remarks earlier this morning emphasize this point. While Congress may be increasingly sensitive to the growing burden of regulation and the need to avoid unnecessary paperwork, it is fundamentally concerned with eliminating outright abuses of federal programs and assuring accountability for the use of taxpayers' dollars.

The same point is implicit in NIE Director Pat Graham's discussion of research needs. Despite her recognition that there are limits on what the federal government may appropriately or realistically do, her remarks make it evident that the government is likely to participate more actively in evaluating the effectiveness of current practices and programs in our colleges and universities.

It should be clear, then, that there is no use searching for a magic formula for de-regulation, or adamantly insisting that the federal government should not intervene on the campus, however much we may enjoy the rhetorical exercise. The 1980s will surely see a continued, strong federal involvement in higher education. We may resign ourselves to living with red tape, but we must brace ourselves to resist those pressures toward centralization, standardization, bureaucratization, and uniformity, which threaten the diversity that is a fundamental strength of our system.

Proceeding from the assumption that the federal presence is here to stay, we must develop new tools for limiting it. As a general principle for rulemaking, we should seek to establish the "test of necessity" which the House Subcommittee on Postsecondary Education wrote into the Education Amendmetss of 1976. The broad power previously granted the Commissioner of Education to issue regulations was limited in certain instances to authority to issue "such regulations as may be necessary."

We should encourage Congress to apply this test consistently throughout the statutes. This will require some discipline on our part, because many of the detailed instructions written into current regulations were placed there at our request, so that we might know more precisely what the government required of us. In federal rulemaking, however, we would do well to forego the luxury of certainty. Instead, we should insist that no regulation may require what is not required in the law itself, absent convincing proof that the requirement is not only desirable but necessary. The burden for justifying any regulation which goes beyond the specific requirements of the law should properly be borne by the federal agency concerned.

Another valuable tool which we should use more frequently for limiting the federal presence is measurement of its costs and benefits. Our most compelling argument for reduction of the regulatory burden lies in the presentation of hard data and analysis of what federal programs cost the colleges to administer. For a community which uniquely prides itself on the search for truth, we have been surprisingly willing to rely on anecdotal complaints as a substitute for the systematic collection of information. We should declare a moratorium on academic rhetoric about the evils of government regulation, and apply our expertise in cost-benefit analysis.

The problems of measurement here are challenging, and the conceptual basis for dealing with them is only just beginning to be explored. The Van Alstyne/Coldren study for the American Council on Education a year ago was an initial effort to measure the impact of federal socially mandated programs. Further research in this area is badly needed. For example, we need to know more about the institutional staff effort being devoted to dealing with federal regulatory requirements, and to what extent this effort has diverted attention from other important activities. Should such costs be considered inflationary, or do they contribute valuable benefits to society? We also need to make better projections of the future costs of federal programs.

Although many colleges may be unable to mount the systematic research which can answer these questions, every institution has a responsibility to make some kind of informed assessment of what the federal presence means on its own campus. This should be a balanced assessment: too often we tend to cite the excesses of government red tape, ignoring the important benefits that federal programs may provide. Harold Enarson's discussions of these issues have been notable (and unusual) for the careful effort he has made to enumerate the positive as well as the negative results of federal programs at Ohio State.

In measuring the federal impact, we also need to share our findings and methods of collecting and analyzing the data, so that they can be replicated and compared by other institutions. Better studies will be of double benefit: they will not only make a stronger case for lightening the federal burden in specific areas, they will also give us better information on the extent to which our own institutional goals are threatened or distorted by federal programs and policies. (I have a recurrent nightmare that the cumulative federal impact may turn out to be greater than the sum of its parts.)

By improving our capacity to measure the impact of federal regulation, we will be in a position to stop complaining about it and start coping with it. But we will not be able to cope effectively until we devise a practical and credible mechanism for self-regulation, not only for our own institutions, but for the entire higher education community.

I believe that the development of such a mechanism is the only way we can curb the growth of federal intervention. In my own observation of the Washington scene, the zeal of federal bureaucrats to regulate higher education varies inversely with the community's commitment to deal with its own problems. Where standards are clearly established and generally recognized within the community, the tendency of federal officials is to rely on us to enforce our own standards.

The problem is that, in many areas, there are no generally recognized standards on which institutions may base their policies and procedures. These are precisely the areas where the federal government may feel compelled to move in and establish its own arbitrary standards. Thus it is that we now abide by federal standards for hiring of minorities and women, federal standards to protect the confidentiality of student records, federal standards about the kinds of information we must provide our students, and federal standards of academic progress to determine the eligibility of veterans for educational benefits. Legislation was enacted in each of these cases, not because of any congressional desire to punish our institutions, but because of a congressional finding that we were unwilling or incapable of acting on our own to protect an evident public interest.

Further congressional determinations are pending. We have already had a preliminary skirmish over legislation to regulate the use of student activity fees. We have been negotiating with the Office of Education for two years over

the question of how to determine whether institutional policies for the refund of tuition and fees are "fair and equitable." We have had extensive negotiations with HEW over auditing standards for measuring the indirect costs of research, while Congress, in frustration over the apparent lack of order in this complex area, periodically threatens to settle the matter by law.

The most vulnerable field for further federal intervention--and the most critical for the preservation of academic freedom--is the private, voluntary accreditation process by which the higher education community has historically sought to assure educational quality. In the wake of several studies documenting the weaknesses of the system, and growing concern about tightening accountability for the billions of federal dollars being spent to help students attend post-secondary institutions, the U.S. Office of Education is considering how it can determine which institutions are worthy of their attendance.

In this area, most especially, further federal intervention would undermine the foundations of the academic enterprise. The community must act decisively to strengthen its processes for maintaining academic quality, and its procedures for assuring fairness and probity of institutional administration and governance.

The Council on Postsecondary Accreditation is already working with the regional accrediting associations and the professional and institution-based higher education associations to improve the accreditation process. Unfortunately, this effort has not received the support and attention that it deserves from the higher education community at large.

Too many institutions give scant attention to accreditation issues, because they assume that their own standards are satisfactory, if not impeccable. They are not about to suggest what other institutions should be doing, any more than they would permit others to judge their own policies and procedures.

That would be an infringement of their academic freedom, which they see essentially as "we do our own thing, and you do yours, and let's neither of us bother the other." They seem to believe that this comfortable understanding can be maintained forever, and if they just keep quiet the federal regulators will go away.

This, I believe, is a grave misjudgment. It ignores the fact that, however high an institution's standards, it cannot escape liability for deficient standards in the rest of the community. When those deficiencies result in scandal, the federal government may come rushing into the vacuum which our laissez-faire version of academic freedom has created, and regulate us all. Witness the institutional abuses of the original G.I. Bill which ended variable tuition payments; the celebrated "red Corvette" case and subsequent newspaper exposes which resulted in complicated new restrictions on the direct student loan program; or the isolated instances of misuse of student records which led to blanket regulation of the way the files are kept at every elementary and secondary school, college and university in the country.

We need a systematic process for identifying problem areas where there are no generally recognized standards, and developing consensus on standards which can be articulated for the entire community. Elaine El-Khawas' ACE paper, "New Expectations for Fair Practice," takes an initial step in this direction, providing a checklist for the review of institutional procedures to ensure fair treatment of students. COPA and ACE are now at work on a further step: a model code of good practice that colleges and universities might adopt as a statement of their responsibilities toward students in eight specific areas: publications, admissions and recruitment, financial assistance, recordkeeping, instructional programs and requirements, grievance procedures, career counseling and student services, and student conduct.

Obviously, however, no code can be all-encompassing. Nor should it attempt to be, lest we envelop ourselves in chains as we seek to avoid federal handcuffs. Large areas must be left outside of codes, and in these areas problems will arise from time to time which make it necessary for the community to respond to new pressures. How can we get our act together to articulate standards in these areas, before the federal government determines them for us?

I propose a simple mechanism. A Commission on Administrative Standards and Procedures should be established, with appointive representation from each of the national higher education associations. The U.S. Office of Education should have ad hoc membership on the Commission, to represent any government agency experiencing problems in its relationships with the colleges and universities.

The Commission would meet periodically to identify specific problem areas and determine whether standards need to be developed for consideration by the community. Meetings should be public, and any association or individual should be free to attend, submit written recommendations, or request an opportunity to speak.

If the Commission decided that standards were lacking in a given area, it would assign responsibility for development of appropriate standards. Matters affecting educational quality would be referred to the accrediting agencies; issues involving the probity and equity of institutional procedures would be assigned to panels with relevant expertise (i.e., registrars, student aid officers, research administrators, business officers, personnel officers, etc.). Proposed standards would be placed before the Commission for consideration. If the Commission agreed that the draft proposals were ready for presentation, they would be submitted to the associations for possible adoption.

Such a Commission could be operated relatively easily with the members contributing their time and the associations jointly sharing administrative expenses. In fact, the nucleus for the Commission already exists in an ad hoc task force recently organized by the Washington-based associations to explore the areas in which standards could usefully be developed.

Once standards for a particular problem are adopted by the community, the next question, inevitably, is how to assure that they are observed. Here too, a rather simple mechanism could be established without encouraging the proliferation of a compliance bureaucracy. Adopted standards should be widely circulated and should contain a response mechanism, such as a post office box, for the submission of complaints. The Commission could take responsibility for screening complaints and referring them to the appropriate accrediting agencies, professional and institutional associations, or government agencies for consultation and negotiation with the parties concerned.

Sanctions need not be heavy-handed. Establishment of the process would generate wide interest in the standards approved by the community, and place a premium on the institution's assertion that it observes those standards. Its right to make that claim could be conditional on its willingness to negotiate and correct instances of substandard procedures.

Such a standard-setting and monitoring mechanism, at best, could prevent the establishment of arbitrary federal standards. At worst, it would enable the community to insist that, if the federal government must enforce standards, they should be those generally recognized by the community. In any case, the initiative for establishment of standards in new and uncharted problem areas would come from the community, and would vastly improve our bargaining strength with would-be federal regulators.

For instance, take the issue of fair and equitable tuition refund policies: the fact that institutions vary so widely in their policies, and that no accepted standards of fairness and equity exist, instigated the threat of federal intervention in the first place. I am convinced that USOE's concern in this area would vanish if we could demonstrate that criteria for judging fairness and equity had been established.

Another example is the issue of measuring the indirect costs of research. Protracted negotiations have been conducted with HEW on this matter of such vital interest to the research universities. Progress has been made, through a tedious process of reacting to HEW's proposed regulations. If our arguments persuade the Department officials that our objections are valid, they may return months later with a partial concession and another proposal, and negotiations begin all over again. If we had had a process for taking the initiative to develop community standards for the measurement of indirect costs in the first place, we might never have had to sit down at the negotiating table. We could have simply presented the standards the federal government could expect at any institution engaged in contract research.

The self-regulating mechanism I have proposed requires no massive effort on our part--only a commitment to establish our own standards wherever they are needed. This does not mean that we must all subject ourselves to the lowest common denominator, or the highest. It should be possible to develop different standards for different kinds of institutions. It should also be possible to avoid an encyclopedic code of conduct for every conceivable situation that may arise. True, we must be willing to surrender a small part of our institutional autonomy in order to strengthen the autonomy of the community as a whole. The alternative is constant risk that the federal government may decide our standards for us.

I have suggested a strategy which would apply the test of necessity to all proposed regulations, marshall our academic expertise to measure the real burden imposed by regulations, and commit our best efforts to strengthening the process of self-regulation. If we get our act together, we can at least minimize federal intervention in the educational enterprise. And, by strengthening our capacity to regulate ourselves, we can foster a deeper respect for our value imperatives, and for the role of higher education, in society at large.

* * * * * * * * * *